

A.S., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Cedar Rapids, IA, Employer**

Case Submitted on the Record

³ The Board notes that following the July 19, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period July 12 through November 15, 2017 causally related to her accepted bilateral first metatarsal phalangeal joint arthritis.

FACTUAL HISTORY

On June 2, 2017 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed osteoarthritis in her right foot and great toe as a result of her repetitive work duties, which included extensive walking. She indicated that she first became aware of her condition on March 1, 2015 and realized that it resulted from her federal employment on February 3, 2017. Appellant stopped work on May 15, 2017.

In examination reports dated March 3 and May 17, 2017, Dr. Scott R. Ekroth, a Board-certified orthopedic surgeon, related that appellant continued to complain of significant pain on her right first metatarsal phalangeal (MTP) joint. Examination of appellant's right toe revealed pain on motion of the first MTP. Dr. Ekroth noted active problems of right foot hallux rigidus and right ankle and foot osteoarthritis.

In a June 6, 2017 letter, Dr. Nancy Boelter, a Board-certified family physician, related that she had examined appellant on February 3, and May 23 and 31, 2017 for complaints of increasing bilateral foot pain involving the great toe region. She indicated that x-ray examination had confirmed severe osteoarthritis of the right first MTP and moderate to severe on the left first MTP. Dr. Boelter reported that appellant had been off work since May 15, 2017. She opined that appellant's severe osteoarthritis of her first MTP joint bilaterally was a result of walking long distances as a mail carrier.

Appellant submitted an August 9, 2017 examination report by Dr. Boelter with a majority of the report crossed out.

In a September 5, 2017 examination report, Dr. Ekroth related that appellant continued to have significant pain and limitations due to arthritis in her toe. He noted active problems of right foot hallux rigidus and right ankle and foot osteoarthritis. Dr. Ekroth reported that appellant was to undergo right first MTP fusion surgery and would likely be out of work for four months.

In a September 5, 2017 letter, Dr. Boelter reiterated that appellant suffered significant biomechanical deformities of her first MTP joints of both feet from years of long distance walking as a mail carrier. She listed her dates of treatment and opined that appellant should remain off work until September 21, 2017 when she underwent surgery.

On September 15, 2017 OWCP accepted appellant's claim for aggravation of the right and left foot first MTP joint arthritis.

On October 25, 2017 appellant filed claims for wage-loss compensation (Form CA-7) for disability for the periods July 12 through October 23, 2017 and May 15 through July 11, 2017. On the reverse side of the claim form, she indicated that she used a combination of sick and annual leave from May 15 through July 11, 2017 and that she was on leave without pay (LWOP) status beginning July 12, 2017.

On November 16, 2017 appellant underwent authorized right first MTP fusion surgery. The operative report noted a preoperative diagnosis of right first MTP degenerative joint disease.

In examination reports dated December 13, 2017 and January 23, 2018, Dr. Ekroth indicated that appellant was recovering well since her right first MTP fusion surgery. He conducted an examination and noted active problems of right foot hallux rigidus and right ankle and foot osteoarthritis. Dr. Ekroth completed a January 23, 2018 work status note, which reported that appellant could return to mainly sedentary work.

On January 26, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for disability for the period July 12 through December 1, 2017.

On January 24, 2018 appellant returned to part-time, modified duty working for two hours per day.

In a March 6, 2018 letter, Dr. Ekroth related that he first examined appellant on March 3, 2017 for complaints of pain in both her first MTP joints. He noted that appellant underwent right first MTP joint fusion surgery on November 16, 2017. Dr. Ekroth explained that he initially placed appellant off work for two months after her surgery and placed her on mainly sedentary work on January 24, 2018.

On March 8, 2018 appellant underwent left first MTP joint fusion. The operative report noted a preoperative diagnosis of left first MTP degenerative joint disease.

In a March 26, 2018 letter, Dr. Boelter noted the dates she treated appellant for complaints of bilateral foot pain. She indicated that diagnostic testing and physical examination findings were consistent with advance osteoarthritis of appellant's bilateral first MTP joints. Dr. Boelter reported that appellant failed conservative therapy and was referred to Dr. Ekroth in February 2017. She noted that appellant was placed off work due to ongoing pain and inability to complete her job duties as of May 15, 2017.

By decision dated May 9, 2018, OWCP denied appellant's claim for wage-loss compensation for the period July 12 through November 15, 2017. It found that the medical evidence of record was insufficient to establish that she was unable to work during the claimed period due to her accepted bilateral first MTP joint conditions.⁴

In a separate decision of even date, OWCP also denied appellant's claim for disability for the period May 15 through July 11, 2017. It found that the medical evidence of record was insufficient to establish that she was totally disabled from work during the claimed period due to her accepted conditions.

On August 29, 2018 appellant returned to full-duty work.

On May 3, 2019 appellant, through counsel, requested reconsideration of the May 9, 2018 decision concerning appellant's claim for disability for the period July 12 through

⁴ OWCP also determined that since appellant underwent authorized surgery on November 16, 2017 for her right first MTP joint, she was entitled to wage-loss compensation beginning November 16, 2017.

November 15, 2017.⁵ Counsel indicated that an April 15, 2019 letter from Dr. Boelter supported that appellant was unable to perform her job duties from May 15 to November 16, 2017. Counsel also noted that appellant was providing Dr. Boelter's August 9, 2017 report that did not have sections crossed out. He also included a footnote, which indicated that appellant sought disability from May 15 through July 11, 2017.

Appellant submitted an August 21, 2017 narrative report by Dr. Boelter who indicated that appellant presented with right foot pain with an onset of two years ago. Dr. Boelter related that appellant injured her foot at work related to arthritis. She provided examination findings and diagnosed bilateral foot pain and right foot osteoarthritis. Dr. Boelter reported that appellant's condition was ongoing and recommended that she remain out of work until September 21, 2017.

In an April 15, 2019 letter, Dr. Boelter related that it was her opinion that appellant could not have reasonably performed her required job duties from May 15 to November 16, 2017. She indicated that appellant was not able to stand or walk for 8 to 10 hours a day, squat, or perform bending/lifting of mailbags due to severe foot pain and swelling of her first MTP joints of her feet. Dr. Boelter reported that appellant's examination findings supported this as there was evidence of joint swelling and reduced range of motion.

By decision dated July 19, 2019, OWCP denied modification of the May 9, 2018 decision concerning the period July 12 through November 15, 2017.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁷ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹

Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.¹⁰ The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and

⁵ Counsel indicated that OWCP failed to address appellant's claim for disability for the period May 15 through July 11, 2017. However, as noted above, that period was addressed in a separate May 9, 2018 decision which was mailed to both appellant and counsel at their addresses of record.

⁶ *Supra* note 2.

⁷ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 7.

¹⁰ *Amelia S. Jefferson, id.*; *William A. Archer*, 55 ECAB 674 (2004).

medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.¹¹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant requested wage-loss compensation for disability for the periods May 15 through July 11, 2017 and July 12 through November 15, 2017. In separate decisions dated May 9, 2018, OWCP denied appellant's claim for wage-loss compensation. Appellant, through counsel, subsequently requested reconsideration of the May 9, 2018 decision concerning the period July 12 through November 15, 2017. He indicated that new medical evidence supported that appellant was unable to perform her job duties from May 15 to November 16, 2017. In its July 19, 2019 decision, OWCP denied modification of the May 9, 2018 decision, which denied wage-loss compensation for the period July 12 through November 15, 2017.

In support of her wage-loss compensation claim, appellant submitted various reports and letters by Dr. Boelter. In a June 6, 2017 letter, Dr. Boelter recounted appellant's complaints of bilateral foot pain involving the great toe region and indicated that x-ray examination had confirmed osteoarthritis of the right and left first MTP. She noted that appellant had been off work since May 15, 2017. In a March 26, 2018 letter, Dr. Boelter further explained that appellant was placed off work due to ongoing pain and inability to complete her job duties as of May 15, 2017. In an April 15, 2019 letter, she opined that appellant could not reasonably perform her required job duties from May 15 to November 16, 2017. Dr. Boelter reported that appellant was not able to stand or walk for 8 to 10 hours a day, squat, or perform bending/lifting of mailbags due to severe foot pain, reduced range of motion, and swelling of her first MTP joints.

The Board finds that, while the reports from Dr. Boelter are not completely rationalized, they are consistent in indicating that appellant was disabled from work due to her accepted osteoarthritis of the bilateral first MTP joints.¹³ Although the reports are insufficient to meet appellant's burden of proof to establish the claim, they raise an uncontroverted inference between appellant's accepted condition and resultant inability to work from July 12 through November 15, 2017 and, thus, they are sufficient to require OWCP to further develop the medical evidence.¹⁴

¹¹ V.A., Docket No. 19-1123 (issued October 29, 2019).

¹² See S.G., Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 10; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ See D.G., Docket No. 18-0043 (issued May 7, 2019); see also E.J., Docket No. 09-1481 (issued February 19, 2010).

¹⁴ *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁵ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁶

The case should, therefore, be remanded for further development. On remand OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts for a rationalized medical opinion as to whether appellant's inability to work from July 12 through November 15, 2017 is causally related to her accepted employment conditions. If the second opinion physician disagrees with the explanations provided by Dr. Boelter, he or she must provide a fully-rationalized explanation explaining why the accepted employment factors were insufficient to have caused appellant's claimed disability. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁵ *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁶ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 18, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board